

FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY COUNCIL

**Holiday Inn Key Largo, Key Largo, FL
Tuesday, October 16, 2012**

DRAFT MINUTES

Members Present

Clinton Barras
Chris Bergh
Jeff Cramer
Ben Daughtry
Richard Grathwohl
David Hawtof
Don Kincaid
Steven Leopold

David Makepeace
Corey Malcom
Rob Mitchell
Martin Moe
Ken Nedimyer
George Neugent
Andy Newman
Bruce Popham

Alternates Present

Justin Bruland
Scott Fowler
Bruce Frerer
Susan Ford Hammaker
Eric Handte
Art Itkin
Jessica Pulfer

Suzy Roebbing
Jim Scholl
Diane Silvia
Bob Smith
Joe Weatherby
Leah Wilde-Gould

Agency Representatives Present

Ed Barham
Kenny Blackburn
Pat Bradley
Major Alfredo Escanio
John Hunt

Kristie Killam
Karen Raine
Joanna Walczak
Tracy Ziegler

Agency Alternate Present

Phil Goodman

Call to Order/Pledge of Allegiance/Roll Call/Approve Minutes from August 21, 2012

Meeting/Adopt Agenda for this Meeting/Chairperson's Comments

Chair Ken Nedimyer called the meeting to order at 9:03 AM, then led the Pledge of Allegiance.

Lilli Ferguson, the Sanctuary Advisory Council (SAC) coordinator for the Florida Keys National Marine Sanctuary (FKNMS), called the roll for all voting and agency representative members and alternates.

Approval of the draft minutes of the August 21 SAC meeting was moved by Bruce Popham and seconded by David Makepeace. Chair Nedimyer stated, regarding the agency representatives noted as present, Joanna's Walczak's name should be removed, but LCDR Michael Capelli's should be added. With those changes, Chair Nedimyer deemed the minutes approved.

Adoption of the agenda was moved by Richard Grathwohl and seconded by Susan Ford Hammaker. Regarding changes, Chair Nedimyer said Sanctuary Superintendent Sean Morton would announce the

new SAC members. Also, Chair Nedimyer said two speakers would be added to the 1:45 PM talk, Joel La Bissonniere and Jim Landon. He then deemed the agenda approved with those changes.

Mr. Morton read the list of appointments to new SAC terms: Julie Ann Floyd, Citizen at Large – Lower Keys (alternate); Dolly Garlo, Citizen at Large – Middle Keys (member); George Garrett, Citizen at Large – Middle Keys (alternate); Chris Bergh, Conservation and Environment [second of two seats for this constituency] (member); Jim Scholl, Conservation and Environment [second of two seats for this constituency] (alternate); Martin Moe, Education and Outreach (member); Alex Brylske, Education and Outreach (alternate); Commissioner George Neugent, Elected County Official (member); Commissioner Heather Carruthers, Elected County Official (alternate); Jeff Cramer, Fishing – Commercial – Shell/Scale (member); Justin Bruland, Fishing – Commercial – Shell/Scale (alternate); Pete Frezza, South Florida Ecosystem Restoration (alternate); Corey Malcom, Submerged Cultural Resources (member); Diane Silvia, Submerged Cultural Resources (alternate); Andy Newman, Tourism – Upper Keys (member); and Eric Handte, Tourism – Upper Keys (alternate).

He noted there were two agency people who began representing their agencies since the last SAC meeting: Tylan Dean [National Park Service (NPS), alternate representative], and Kristie Killam, [U.S. Fish and Wildlife Service (USFWS), representative].

Also, Mr. Morton thanked the following people who just concluded their service on the SAC: Debra Illes [who served as the Tourism - Upper Keys member]; Bill Kelly [who served as the Fishing - Commercial - Shell/Scale alternate]; Bill Chalfant, [who served as the Submerged Cultural Resources alternate]; and Ms. Hammaker [who served as Tourism - Upper Keys member, then alternate]. Mr. Morton presented a plaque to Ms. Hammaker recognizing her long SAC service.

Ms. Hammaker thanked the group and said it was a pleasure, and noted she planned to reapply when there was a suitable opening. Chair Nedimyer thanked her for all she did in the community.

Chair Nedimyer welcomed the group to Key Largo, observing its primary industry was diving, although Key West and the rest of the Keys had it too. He said as the meetings moved locations, the differences in the community could be seen.

Marine Zoning and Regulatory Review: Draft Alternatives Development Workplan and Issue Priorities – Mr. Morton, FKNMS and SAC

Mr. Morton said SAC members should have a copy of the working draft of the workplan in their packets, and he also sent it out over the weekend. He reviewed the progress on the process so far. He said there was a lot to tackle, and a lot of opinion as well as direction. Top SAC priority issues and actions needed to be decided upon. He related that he and Chair Nedimyer met and took a first cut at how the SAC could do this over the next year, paying attention to public concerns, what the SAC wanted to tackle with zoning, and some of the resource issues. In the draft document, some items would be heard at a SAC meeting and the SAC would give recommendations, some would be tackled by SAC working groups, and some would be farmed out to a SAC member with some direction from the SAC then brought back to the SAC for advice. He said this was meant to be discussed again in December, when it would be on the agenda for adoption. The final direction to FKNMS would define what the SAC and staff would be working on in calendar year 2013. He said the draft was not fully fleshed out, as it was important to know what SAC members thought, and he said he was also concerned about staff load. He said the SAC recommendations would go to the National Oceanic and Atmospheric Administration (NOAA) and to the state, to the Florida Department of Environmental Protection (DEP) and the Florida Fish and Wildlife Conservation Commission (FWC). He also mentioned he would be going to Tallahassee. Most of it would deal with regulations, he added.

- Chair Nedimyer said a subset of the people in the room were in a core group, and they also tried to distill down from the goals, objectives and the public comment. Some of the items would get pushed to different agencies, and he said Mr. Morton would go over that. Mr. Morton and the core group tried to lump items into 4-5 different categories, for the SAC to decide what it wanted to do.
- Mr. Makepeace said only three SAC working groups were mentioned in the document, and he wondered if more would be established after the discussion. He also said there was a limited amount of time, and he wondered if there would be a discussion of how people would decide which to do.
- Mr. Morton said there were only three laid out; other issues described in the document would be brought to the entire SAC to make a recommendation. A SAC working group would hold separate meetings with structure from the SAC, bring reports back to the SAC for reports, then eventually, would bring final reports to the SAC for the SAC to provide advice. He said he was willing to consider more groups, but he was sensitive to the timeline and to staff and SAC time. As much as could be done in full SAC meetings, he preferred to do, although some issues could not be done that way.
- Mr. Grathwohl asked if a representative from the SAC should be in any subgroups.
- Mr. Nedimyer agreed they would, saying the SAC needed to be represented at every level.

Mr. Morton then reviewed that the SAC could form formal subcommittees and working groups. Subcommittees would have just SAC members. SAC working groups would normally be chaired by a primary member, and people with outside expertise [not on the SAC] could be brought in to participate in a SAC group. SAC working groups [and SAC subcommittees] could not directly advise the agencies; advice always comes from the SAC. He reviewed the SAC goals and objectives for the process, and pointed out the process was also implementing the revised management plan. The last review of the management plan did not change any of the regulations, but many of the recommendations in the last management plan review mentioned things connected to regulations. Page five of the draft SAC workplan summarized all the things from the revised management plan related to zoning and regulations. He noted the timeline was a part of the workplan and was on track. Though things would happen along the way, and something might be extended an extra month or meeting, he stated he wanted to avoid slippage. Towards the end of next year, there would draft alternatives and a draft Environmental Impact Statement.

They had talked about forming a working group to look at coral reef restoration, which was in the management plan and was mentioned during the scoping meetings. The working group members would look at if there were specific areas in FKNMS to set aside for multispecies restoration, for scientists to work on reef restoration, with the idea that areas could be set aside with limited access.

- Mr. Bergh said that was largely right on, but there were other restoration topics besides zoning, such as making permitting more streamlined to make restoration happen.
- Mr. Morton said permitting would be a huge part of that discussion and that there would be a lot of crossover in the discussions. Permits would still be needed for activities in FKNMS. It could be added as a topic for the working group to discuss. He then said this was a conceptual discussion and the exact timing of when everything would start and end was not known yet.
- Mr. Makepeace said topic number four dealt with the permitting process, so it would be necessary to look at how to deal with overlaps.
- Mr. Morton acknowledged there would be overlaps among all of these topics, but the SAC meetings would continue throughout the year, and the SAC working groups would be reporting back to the SAC about what had been done so far, so everyone would hear what each working group had been doing. This would help in not duplicating efforts and in coordination, and in the end it would all come together with a SAC recommendation.
- Mr. Makepeace suggested the coral restoration working group just look at any issues related to coral restoration and streamlining permitting.
- Mr. Morton said changing regulations could not be talked about without also talking about permitting.
- John Hunt felt it made sense to add the permitting objective into the coral restoration working group.

Mr. Morton continued to review the items in the workplan, stating there had been a lot of concern about protection of shallow water seagrass habitat, and a lot of discussion at SAC meetings about boater activities and fully protected areas for seagrass and bank systems. This would be a separate SAC working group. He also said it was highlighted in the Condition Report as a habitat that was becoming increasingly degraded and needed management actions. This topic also related to concentration of users/"party zones" (for lack of a better term). There could potentially be restrictions on wake, motoring, anchoring etc. as effective tools in protecting bottom and nearshore wildlife habitats, particularly in the Refuge areas. Questions to examine were if existing areas needed to be expanded, in different places, etc., and if there were high impact activities, where they should occur and not occur. Also, he pointed out control areas for research did not currently exist.

- Joe Weatherby asked, if an area was set aside for monitoring, would there be five areas, for seagrass restoration in each of the FKNMS regions?
- That would be what the working group would probably talk about, Mr. Morton replied. While possible, all the working groups might or might not look at new areas, and might or might not have control areas.
- Mr. Bergh said with the prospect of new research-only areas, there was some sensitivity about the existing ones. It would be important to figure out what the scientific questions would be for seagrass research, then look at where seagrass areas were needed, if at all.
- Mr. Moe said shallow water and seagrass areas were some of the most used and abused in the Keys, and he felt it would be a good idea to include the effects of pollution on the areas, especially the nearshore areas, as just physical impacts were discussed in the draft workplan.
- Mr. Makepeace suggested adding a bullet on education to the seagrass working group.
- Regarding the licensing topic, Mr. Grathwohl said people who held captains' licenses did not need an extra license; they had to be reexamined every four years.
- Mr. Morton allowed there was probably a research, education, and enforcement component for each SAC working group, so people could consider those in there.

The third SAC working group could talk about existing ecological reserves and the boundaries, Mr. Morton said. It would take some work and there would be a lot of things to address. Things that had come up included spawning aggregations and changing wildlife areas where wildlife had moved around, with the possibility of new protection in areas of the backcountry that did not have protection now. This would need to be fleshed out more, including getting the objectives right. He said perhaps the other two working groups could come up with their objectives first, and those could feed into creating ones for the third working group. It might start work in March or April.

- Chair Nedimyer said there were differences and similarities between the regions, and that might come up.
- Mr. Morton said the other topics would be talked about in the advisory council structure. The next step was to figure out how to tackle it all and schedule things.
- Bob Smith said on the goals and objectives, the understanding and support of everyone in the room was wanted. He said the people in the room understood the link between the goals and objectives and the other things in the workplan, but the connection was not explicitly stated in the document. He wondered if a statement on page three supporting the goals and objectives and linking them to the rest of the document should be added.
- Mr. Morton said it was a good point, and that was why he put the information up front. He said it would be possible to add to the document which goals each working group would address, if that helped.
- Mr. Smith said he felt like a statement in the beginning would be important, to make connections between the goals and objectives, and the way to meet them would be zoning, establishing regulations, etc.
- Mr. Bergh said that called to his mind the purpose of FKNMS, in the act that established the sanctuary.

- Mr. Morton agreed more introductory stuff could be added about why FKNMS was here and what was being done before finalizing the workplan.

The fourth topic in the draft workplan was adaptive management and permit procedures. He said a lot of comments came in from the SAC and during the scoping period, as well as while managing under the current regulations and permit procedures. He said the FKNMS staff knew of things they would like to change, and in the larger sense, there was a desire to make changes in zoning and regulations to more quickly adapt to what was going on in the environment. There could be a change like a bleaching event, user concentration, invasive species, etc. The structure in place takes a while to change, and sometimes the permit procedures did not allow FKNMS to adapt as fast as the staff would like. He wanted to have FKNMS permit coordinator Joanne Delaney come down and talk to the SAC about this, and about regulations that did not work as intended, where regulatory flexibility could be increased/decreased, and why permits were issued for some things but not others. The staff could go off and work on the issues, then bring something back to the SAC for discussion and a recommendation. It would not be a formal working group for this topic; the entire SAC would be providing direction. Some things in the regulatory and permit structures FKNMS could not change, Mr. Morton cautioned, but he said adaptiveness could be built in. He also said there was a need to begin thinking spatially and temporally, since some zones may have been set up to protect a certain species which has moved to a new area where there is no protection.

- Chair Nedimyer said it could prompt a smaller group discussion. Some of the SAC members had dealt with the issue in the past, and might want to talk about some of the nitty gritty details.

- Mr. Bergh said the timing of this was good, as the other groups would have time to consider what came out of their discussions on their topics to then feed into the discussion for management approaches.

The next issue in the draft workplan was artificial habitats and reefs, Mr. Morton said. There had been a lot of discussion on it, some of which were in the Condition Report, and also comments that came in during the scoping period, which covered the gamut from reef balls to statues to sinking ships. There are also related topics, like invasive species. A lot of people were not clear if there was a policy on artificial reefs. Mr. Morton said the regulation itself said it was prohibited. Right now, they go through a case by case permit structure, and are evaluated. The State of Florida had comments, and sought clarification, and had some comments were on the scientific part of that. Mr. Morton noted he had sent a summary of the science on artificial reefs out to the SAC previously. The remaining major scientific question was how artificial reefs served as an attractant. One suggestion was to make one of the existing artificial reefs a no take area and to compare it to one where there was take. He said it was important to get those questions right first before having any workshop or group. He said they may have a spring workshop on the topic, but first, the agencies, particularly NOAA and FWC, should get a common understanding of the existing regulatory structure and policies, and questions to pose in a public workshop.

- Mr. Newman asked if there had been a fair amount of study on some of the projects, such as the Spiegel Grove.

- It depended on the research questions, Mr. Morton said. Some socioeconomic studies were done, and the Reef Environmental Education Foundation did reef counts, but it is a fished area. There was no way to make a definitive statement that it produced new habitat or served as an attractant, a question that had been out there for twenty years.

- Mr. Newman asked about funding for this and other questions.

- We would have to figure that out, Mr. Morton said. He said there was a lot of interest in the issue and that research question.

- Chair Nedimyer said a lot of the wrecks in Key Largo and the Keys were primarily sunk for diving, whereas in other places in Florida they were sunk for fishing. He said the Spiegel Grove was sunk with dive dollars, so this may be one of the only places where one of those wrecks could be set aside for that type of study.

- FWC had a significant artificial reef program and was the facilitator on a lot of this stuff, Mr. Morton stated, Fishing was the driver.
- Mr. Weatherby said some of the money was connected to the activities allowed. He agreed the state's concerns were aligned with fishing, and he did not feel they were interested in no take.
- Steve Leopold asked about the funding in the areas we were talking about; he thought in the Keys the wrecks were mostly for diving, and that elsewhere in the state they might be for fishing.
- Mr. Morton said state resources were invested in artificial reefs, including in FKNMS. The resources came out of FWC and that was an official program they supported.
- Mr. Hunt the source of those funds was saltwater fishing licenses. The Bibb and the Duane preceded the FWC and saltwater fishing licenses; he was president of the Artificial Reef Association, and it was all local. The Association started with the bridge rubble concept, which grew into other issues. He was not sure the source of the funds was that relevant to the question. FWC made comments about moving into the future with artificial reefs, and when FWC staff members met with Mr. Morton to talk about the workplan, they agreed there was a need to come up with a better plan moving forward, including getting more information. A lot of folks liked diving and spearfishing on the artificial reefs, regardless of what the original intent was, but it was still important to know how artificial reefs fit into a broader marine context.

Mr. Morton said the next issue was boundary adjustments; he reported a lot of comments on that came in. Potential changes to specific zones could be tackled by the various groups. For the overall boundary, a suggestion was for Mr. Morton to work with GIS folks and partners, the comments, and what is known science- and management-wise, such as about habitat areas of concerns, the Particularly Sensitive Sea Area, Area To Be Avoided (ATBA), etc. He planned to do a presentation in December about boundary ideas, not for SAC approval, but for discussion and a nod to "go study it", as the economic and environmental impacts of making a boundary change would need to be known. That way the various groups would have a sense of their boundaries for consideration.

- Mr. Grathwohl said there would be a big outcry if, say, the "Magic Mountains" were closed off.
- Mr. Bergh observed no one was talking about closing them.
- Chair Nedimyer said just changing the boundaries would not mean closing them; it would mean expanding the management area of the sanctuary.
- Mr. Morton said this would just be the framework to work in, not a recommendation to go changing the sanctuary. It would just be to start the impact analysis.
- Mr. Weatherby asked who would go and study it.
- NOAA and the USFWS would be putting together an Environmental Impact Statement (EIS), Mr. Morton replied.
- Mr. Weatherby said there could be hard pushback on the front end if it were not explained carefully.
- A person could also talk about areas not being studied, Mr. Morton suggested. The South Tortugas Bank was one area of concern. If not in FKNMS, what would the working group look at, he asked?
- Mr. Weatherby expressed concerns about perception from what would come out in the press and about the need for the SAC to do outreach.
- Mr. Bergh suggested if anyone brought up an area in scoping for consideration, it could be shown on a map.
- Mr. Smith said the SAC should not be afraid to tackle any issues or to mention the issues it was considering. He agreed it would be important to explain why the SAC was looking at the issue, and to explain the sides, if there were more than one side

Public Comment

Peggy Mathews of the American Watercraft Association provided some current information on the personal watercraft industry. She said two-stroke boats were not made any more, they were all four-stroke and mostly three-person vessels were made now, and also, there were no stand-up craft. She stated a

photo shown at a previous meeting was of a racer. She mentioned some of the facts in her handout, such as that the average age of an owner was forty. Regarding environmental impacts, she mentioned there were studies that that science had determined it was the size of the bow wake and not noise that flushed birds. A 100-foot buffer around any colony should protect it, she felt. She said she had all the studies and the economics. She mentioned a study by Bob Leeworthy which showed a huge generation of revenue in the Keys and that the industry provided a number of jobs. She said she would be happy to work with anyone on the issues.

- Mr. Newman felt the challenge with PWCs was with the operators, and asked about what the industry was doing in regards to education for renters and others.
- Ms. Matthews said she was involved in passing a boater education bill in the 1980s, and said it required boater education for all operators. Personal water craft had an age limit for operators, she explained; a person had to be 14 to operate and 18 to rent a personal watercraft. She also talked about the educational video that came with every personal watercraft sold, and the fact that there was a Florida-specific video.
- Mr. Newman asked if the Florida video addressed some of the concerns people in the Keys had.
- It addressed safe operation of watercraft, and responsible operation went both ways. She stated fishermen should be able to fish the flats without being harassed, but she did not think it was as big of an issue here anymore. The boats were bigger now, and did not have high-impact maneuverability now.
- Jessica Pulfer asked if the average age of an operator was known.
- A person had to be 14 or older, unlike with most boats, Ms. Matthews replied.
- Ms. Pulfer asked about operators weaving in and out.
- Ms. Matthews said operators followed the laws of all vessels, so it was covered by regulation.
- Mr. Moe said he lived 100 yards from a party beach, and noted personal watercraft were fun to ride. On big weekends, at least a dozen people on personal watercraft were not operating the way she described, he said. He mentioned he had seen 8-10 year-olds operating them, and had seen them cruising among people in the water.
- Ms. Matthews asked if he had ever reported that and also if he had gotten a response from law enforcement.
- He replied yes to both questions.
- She said the industry had given the Monroe Sheriff's office six PWCs to be able to do patrols. She encouraged him to continue to make reports to law enforcement.
- Chair Nedimyer said this time was supposed to be public comment, not a long give and take discussion, and he did not want the meeting to go totally off track. While he did not want to be rude, he said there was an agenda and things to be accomplished. Also, he said the public was supposed to have three minutes to speak.

John Hammerstrom said he was a resident of Tavernier and was representing Last Stand. He spoke about widening the Key West harbor channel, and a resolution on a proposed feasibility study to be considered at a meeting of the Key West City Commission the day after the SAC meeting. The proposal was to dredge and cut to make the channel 150 feet wider to allow longer cruise ships to enter the harbor. He said Last Stand opposed starting a feasibility study for a number of reasons, including that there would be impacts to the National Marine Sanctuary. The group believed the momentum of a study would bring the project to actuality. He said the Lower Keys Guides Association opposed the study as they felt there would be damage to the habitat. He stated an act of Congress would be necessary to change the law that currently prohibited new dredging in FKNMS. He asked that SAC adopt a resolution opposing the Key West resolution and to have it read into the minutes of the Key West meeting. According to the flats guides' letter, he said the proposed dredge and cut area was the epicenter of the tarpon fishery.

- Tim Birthisel of Terra Sub Aqua said he came from Ohio about sixteen years ago to operate an aquaculture business between Davis and Conch Reefs. He offered support of the goals of the SAC, in the interests of promoting biodiversity. He represented some Ohio and business and research interests. He

thought there was a unique possibility to use the Keys to leverage resources here on a global scale. He suggested using the existing, regulated practice of live rock aquaculture to outcompete companies tearing up reefs all over the world to ship live rock to the U.S. He said he had been doing live rock aquaculture for a number of years and had a better product than importers from abroad. Live rock aquaculture essentially provided an artificial reef environment, though technically it did not meet the definition, and it provided a hard bottom habituated and attracted species of fish that were not there before. The neighboring reef just inshore of where they were operating was becoming a more interesting place, and they thought it was because they were providing a nursery environment. They had seen booms in fish species, etc. and they thought it was beneficial for the biodiversity in the Keys. It was sustainable in an economic sense. They were in this not for the money, but for the feel good part of it, and to put those importers out of business by outcompeting them, he said. Aquaculture nurseries could benefit neighboring reefs. They planted more than were they were harvesting in terms of substrate. He would like to help demonstrate that via a pilot study using a new site and doing baseline work on a neighboring reef, and to show progress in the site over ten years. It would be self-funded, and he wanted to engage people reputable in the field to do the research, get support for live rock aquaculture, and support the goals of the SAC.

Chair Nedimyer thanked the members of the public for speaking.

Marine Zoning and Regulatory Review: Draft Alternatives Development Workplan and Issue Priorities Cont. – Mr. Morton, FKNMS and SAC

Personal watercraft and user conflicts were the next subject in the draft workplan, Mr. Morton said. It was a large part of the public meetings, primarily in Key West. There are existing regulations in place and it is prohibited in the Key West and Great White Heron National Wildlife Refuges, in both the Refuge and Sanctuary regulations, which has led to education and enforcement efforts. He said FKNMS had a personal relationship with the personal watercraft industry for education and needed some more of that. He noted there were a lot of conflicts and numbers out on the water, and that a lot of good work had been done in the last six months, particularly by tour operators around Key West and lower Keys flats guides. They came together and sat down with maps, and had a conversation they had not had before, and were working together to come up with joint recommendations. He said he would like to have a joint presentation from tour operators and the Lower Keys Flats Guides Association at the December meeting, hear their recommendations, and hear the SAC's direction about bringing it back as part of a larger package. He said they had some ideas, including slight tweaks to regulations.

On water quality, a number of comments on this came up, and it was a large topic, Mr. Morton observed. It was one of the main drivers in the law that created FKNMS; that law created a large Water Quality Protection Program (WQPP), a DEP and [U.S.] Environmental Protection Agency (USEPA)-led program, with a lot of NOAA involvement, as the program was part of FKNMS. They had been doing a lot of work for twenty years. He talked a bit about its work. He said FKNMS has also done some other work, such as with discharge regulations. There were a lot of plans in place for the next twenty years, and it seemed to make sense to address the water quality issue by having the co-chairs of the WQPP talk about all the work that had been done, what was in progress now, and plans for the future. There were both point source and non-point source water quality issues. There might be a good opportunity in February, when the WQPP program planned to meet. There could be a joint meeting, or they could come to the SAC meeting. A number of SAC members participate in the WQPP, he mentioned. [The thinking was,] since the WQPP group existed, why come up with a SAC working group?

Regarding fishery management, there were key species highlighted in the Condition Report that were not doing so well; they were under fisheries management now. The fishery management world was a large one, and a little different from what FKNMS handled. Because species-specific issues came up in the Condition Report and in scoping, the thing to do would be to have the fisheries managers come in to have

a discussion about what was ongoing currently with species-specific management. Lauren Lugo was unable to be at this meeting, but she supported the idea. Jessica McCauley of FWC also said it sounded like an idea. The other side was the management and coordination on fisheries management, which had been an issue since it was raised in scoping comments in the early 1990s. He reviewed there was a Gulf of Mexico Fishery Management Council (FMC), a Southeast Atlantic FMC, and the state of Florida involved in the large, complex world of fishery management for this area. On the federal side, a person could find him/herself in Texas or North Carolina discussing fisheries issues that affected the Keys. They had been making a lot of progress, and talking about regional or subregional management, and that could be part of the presentation. They manage by species or species complex. Some of the ideas that came up as well as where fisheries management was going in the future could also be discussed. Mr. Morton explained FKNMS also had fishing regulations, and that there was a protocol in place for how FKNMS promulgated fishing regulations. Some of it was practice, and some of it was in the law. He suggested seeing what came out of this process, and to coordinate along the way and at the end with appropriate management bodies on any potential changes to areas, zones, or boundaries

- Chair Nedimyer mentioned Mr. Popham had applied for a seat on the Fish and Wildlife Conservation Commission. He noted he wrote a letter of recommendation and encouraged others to do so.
- Mr. Popham encouraged people to send any letters to the Governor.
- Mr. Bergh asked about when those needed to be gotten in, and about how new members of the SAC may not have gotten the information.
- While Mr. Popham did not know what the timeline was, he stated there was a backlog of various appointments the Governor needed to make. He was prompted to apply, he said, and expressed appreciation for the support.
- Ms. Ferguson said she would be sending out a new SAC roster the day after the meeting. *ACTION ITEM*: Ms. Ferguson to send out an updated SAC roster.

Mr. Popham said Mr. Hammerstrom brought up the issue of a resolution regarding if the feasibility study would be going forward or not was scheduled for a vote at the Key West City Council, and asked if the SAC could to put together a resolution at this meeting.

- Chair Nedimyer said people had asked to be put on the agenda for this meeting, and he did not want to have a one-sided discussion. He felt that topic was something that would be put on the agenda.
- Mr. Bergh said he took an informal poll, and a SAC recommendation would not be unanimous in support of opposing the study. He said it was too complicated to do on the fly.
- Mr. Popham said that issues had been voted on by the SAC before without having been on the SAC agenda.
- Mr. Bergh said there was nothing that said the SAC could not do it.
- Ms. Ferguson pointed out, per the SAC charter, items to be voted on needed to be on the agenda.
- Mr. Nedimyer said that had been brought to his attention, and since the SAC was not supposed to be doing it, they probably should not.
- Mr. Bergh asked about it being prohibited under the current regulation, and if it would have to have an act of Congress [to allow dredging in FKNMS].
- No. New dredging had been discussed in the original EIS, was against the regulations, and was prohibited, Mr. Morton said. There were exceptions for things like maintenance or when storms required cleaning a canal. Also, sometimes permits could be issued for prohibited activities. He said at this time, FKNMS did not see any permit that could be issued to allow this type of dredging, so that would require a change in the regulations. There was no application for this complicated, and there had been no environment review. If the SAC may any recommendation to him to make any public statements other than that, he would not do it. He also said until an application came in, FKNMS would review it.
- After a few other comments, Chair Nedimyer tabled it, per someone's suggestion, and said the SAC could come back to the topic.

Going back to the workplan, Mr. Morton said there was need for more discussion about enforcement, needing more people out on the water, promotion of enforcement activities taking place, and highlighting enforcement cases. There was already a group that met to talk about ongoing enforcement activities, so this topic could be on a SAC agenda for discussion and feedback, in which all the relevant folks talked about enforcement. He said enforcement of whatever recommendations came out of the working groups would need to be discussed, and they wanted to include FWC enforcement folks in working groups.

Regarding education and outreach, he said there had been comments about FKNMS doing more education about x, y, or z, and a lot of it came down to resources. FKNMS staff members could talk to the SAC about what FKNMS was doing on education and media activities, and have a discussion at the SAC level, so people could understand what the FKNMS staff did and with whom they coordinated.

Another topic was vessel boater licensing and education, he said. The resource impacts had a lot to do with seagrass scarring and ripping up shallow areas. A lot could be addressed by the seagrass working group, but the issue of a program like EcoMariner for the entire Florida Keys kept coming up; there were complications to that. FWC already had a licensing program, a mandatory licensing program for FKNMS and the issues around that could be brought up at a SAC meeting.

User fees were raised at many of the scoping meetings and during the original sanctuary designation, Mr. Morton said. This was raised recently for specific items like the mooring buoy program and certain restoration activities, and it was suggested to have users pay for resources impacted. Perhaps this could be a topic for a specific group, like restoration, but the overall topic should be brought up at a SAC meeting, he said. The original take from NOAA in 1997 was NOAA would not be instituting a user fee for the sanctuary. A sanctuary was a bit different from a park where there was a single point of entrance, and overall coordination with a lot of different agencies.

Regarding the agenda for 2013, some things still needed to be added, and it was a misprint that most things were to be done in 2012 – it was meant to be 2013, Mr. Morton clarified.

- Mr. Smith wondered how the things would be banged back and forth, if it would be between the groups or at meetings.
- A little bit of both, Mr. Morton replied. It would be important to integrate along the way. All the efforts would be staffed by FKNMS and USFWS. He and Mary Tagliareni would be watching the process, and the staff members working with working groups would be talking throughout.
- Mr. Popham commented on the good work of the core group, Chair Nedimyer and the staff, and thanked them. He observed it was a huge amount of work to do in the next year, and it would take a lot of work by the SAC.

Marine Zoning and Regulatory Review: Community Expert Participation and Advisory Council Outreach – Mr. Morton, FKNMS

Mr. Morton said if the sense was we would go with the three SAC working groups, [the next question was] who would be on those working groups? Ideally, a working group size should be in the 8-10 people range, and could maybe go up to the 12-15 range. He said they would have to be capped there, otherwise a group would be a mini-SAC. A SAC working group needed to be chaired by a SAC member. He said input would be sought about who would be on the groups, whether SAC members or community experts. He passed out a sheet for suggestions to the SAC; people on the SAC could nominate themselves, a specific expert, or a group that should send a representative. He asked that the primary and alternate for each SAC seat work together. He said he would also send out an email with instructions with Ms. Ferguson as the central point for gathering the suggestions. **ACTION ITEM:** Mr. Morton to email instructions to the SAC regarding making suggestions for the three proposed SAC working groups. Then

the core group would need to discuss this, he said, and after that, certain people might need to be asked if they were available. ACTION ITEM: core group to discuss suggestions for the three proposed SAC working groups, and then certain people will be asked about availability (if needed). In December, the ideas would be brought back when the SAC approved the workplan. ACTION ITEM: SAC to discuss SAC workplan at the December meeting and the ideas for the three proposed SAC working groups.

- Mr. Bergh asked if there was a maximum in mind, such as half SAC members and half others, for the working groups.

- A working group had to at least have one advisory council member. There was no other guidance than that, Mr. Morton responded. He added he also wanted to make the core group a formal SAC subcommittee. ACTION ITEM: Mr. Morton to ensure the core group is formalized as a SAC subcommittee.

- Mr. Makepeace suggested having 2-3 SAC members in each working group.

- Chair Nedimyer said he could not imagine not having enough SAC members who wanted to be on the three proposed groups.

Marine Zoning Regulatory Review: Council and Working Group Decision-making Processes -- Chair Nedimyer, SAC and Mary Tagliarini, FKNMS

Chair Nedimyer said he and Mrs. Tagliarini had a two-part presentation, but since the meeting was running late, maybe they could just do the other part after the lunch break.

Chair Nedimyer and Mrs. Tagliarini reviewed proposed “Levels of Consensus” for the SAC to come up with a decision, to build a consensus [during the marine zoning and regulatory review process]. Trying to use a pure consensus model often ended up with lots of discussion and a watered down decision. He and Mrs. Tagliarini and others had discussed a model for voting:

5 - I strongly agree with this decision

4 - I agree with this decision

3 - I do not agree or disagree with this decision. I think the proposal needs some more work.

2 - I disagree with the decision

1 - I strongly disagree with this decision.

Mr. Nedimyer explained the idea was to go around the room and have people hold up fingers, and hope that the group would include 75% or more holding people holding up three fingers. If some held up less than three fingers, then the group would go back and talk about it again, to give the people holding up one or two fingers a chance to talk about why they were opposed. Eventually there would be a final vote, and the goal was to have everyone hold up three or more fingers. He said there needed to be multiples of four, so that the math worked out nicely, and that they didn’t want to make consensus 100%.

Mrs. Tagliarini posted and read out the proposed model for consensus, including the exact proposed wording of the points supporting the numbered levels of consensus, which were:

- Consensus is achieved if 75% of the members give a “3” or above.
*** Working Groups be in multiples of 4 so the 75% level is easier to determine. It would make it easier. For instance, for a group of 10 people, there is no way to get 75% of the members to give a “3” or above. They would have to go to 70% or 80% to reach consensus. If we don’t insist on a group size, then we need to establish what is consensus for the odd sized groups.
- On final consensus tallying – numbers will be added up, recorded, and documented in proceedings.
- No one person can veto and stop the process.

- Members who register a “1” or “2” should be encouraged to provide an alternate proposal that achieves the goals and objectives set out by the SAC. If no alternative is offered, they are encouraged to explain why they voted a one or two, and their reasons and objections would be noted and recorded.

Mrs. Tagliareni explained that when a SAC working group put together a proposal for the SAC, the SAC would then know what the counts were (x number of people at 3, 4, 5, etc.) for the group. The SAC would use that information to develop recommendations to the superintendent. All that information would go forward to the sanctuary and the State of Florida. She noted all this would go into the draft plan for December. Discussion ensued.

- Mr. Daughtry said if 3 was “I do not agree or disagree but I think the decision still needs work” and that a 3 or better was counted as a consensus that was happening, it said the group would not be doing any work on it. If 3 was “it is OK, but it still needs work”, then perhaps a consensus was a 4 or above.
- Chair Nedimyer said he added “I think the proposal needs some more work” when they were putting together the draft as he thought a 3 meant “not wild about it.” He said they could take that last part out, but a group could go on and on, and never get consensus.
- If the wording said “I can live with it”, Mr. Daughtry said he would be OK with the wording.
- Mr. Bergh agreed that for 3, the second sentence should be struck.
- Mr. Daughtry felt the SAC needed to decide if it was happy with 3s, or if it needed a certain amount of 4s and 5s.
- Chair Nedimyer said there would always be some 4s and 5s, otherwise why would the issue go to a vote?
- Mr. Bergh said a SAC working group would come up with a number of discrete recommendations, and his point was they would vote on one thing at a time, rather than on a whole package of things.
- Mrs. Tagliareni agreed that was how she saw it, and said people might vote different strengths on different alternatives.
- Mr. Morton said there would need to be a lot of environmental and economic analysis done with each recommendation, and that there might be a desire to put something forward for the purpose of then doing the analysis. He also said there would be “a couple of bites at the apple,” when the [draft] EIS came out, the SAC would be able to give input again.
- Pat Bradley suggested looking at an average score that added up to something.
- Chair Nedimyer responded they looked at that, and it would be hard to get to that kind of number.
- Rob Mitchell suggested not counting 3 as a score.
- There was more SAC discussion about the wording and purpose for 3, including if it should be in the middle, indicate positive acceptance, or indicate non-acceptance. The phrase “I think the proposal needs some more work” was struck from the posted the draft.
- Mr. Daughtry suggested either the staff or core group reword it and bring it back to the SAC. He also suggested if this was the process for a SAC working group, it should be the process for the full SAC.
- Others agreed and Chair Nedimyer said the wording would be worked on and brought back to the SAC. He asked if the SAC was OK with the idea of having 75% of a group having three fingers and above.
- Mr. Newman suggested making it 75% of a group having four fingers and above.
- That would be tough to get, Chair Nedimyer felt. He said they did not want to have one or two people block the whole process by always voting no.
- Scott Fowler suggested making it clear it was about a level of commitment to a yes or no vote, and that 3-5 were yes, and 1-2 were no. He said he had used this type of process in his work previously.
- Art Itkin spoke about severing things regarding how defining 3 was critical, including determining the strength of the scale, and that a 0 would be complete indifference. He provided some suggestions about reworking the scale. He said if the group wanted this scale that was fine, but it was asymmetric and was biased towards moving forward. He said he had no problem with the 75% criteria.

Chair Nedimyer said the topic was running late, and after the lunch break, there would be a vote on SAC letterhead.

Once the SAC reconvened after lunch, Chair Nedimyer said just so there was clarity, the SAC would use this model for reaching decision, and he and Mrs. Tagliareni would try to tweak item 3 so everyone was happy, and people could submit recommendations for that item. They would go with 75%, 3 and above criteria, and ask the 1s and 2s to submit an alternate plan or at least say why they were opposed. He asked if there was anyone who, given this, could not move forward.

- Dr. Itkin suggested wiping out the paragraph about multiples and making the language “at least 75%”, because it could be 80% or more.
- Chair Nedimyer agreed with that point; “at least” would be added before “75%” and the language about multiples of four was struck]. He then asked the group how to handle a vote if someone did not show up – to still have at least 75%? People agreed with that.

Chair Nedimyer concluded they had been going to practice this by voting on a SAC letterhead, but in the interests of time, would skip that.

Review of the SAC Charter, Amendment 1 – Ms. Ferguson, FKNMS

Ms. Ferguson reviewed that the current SAC charter for FKNMS was valid for five years after being signed, and needed to be renewed as it expired at the end of the year. She explained the Office of National Marine Sanctuaries (ONMS) policy limiting consecutive terms for nongovernmental members, finalized since the current charter was signed, was to be included in each SAC charter when it was time for renewal. She reviewed that this term limit policy was for nongovernmental SAC members, and did not apply to governmental SAC members. A person representing a given SAC seat, whether as a member or alternate, would be able to serve three consecutive terms representing that seat, and then would have to go off the SAC for at least a term before applying to represent that seat again. The policy would not be retroactive; once the charter was amended, each nongovernmental SAC member would be considered to be in his/her first term for the purposes of the term limits policy. She also noted there were three waivers in the policy that allowed the ONMS Director to waive a limit if the need arose and fit one of the waiver categories. The renewed charter would include the language in Amendment 1, formatting issues would be addressed, references to the National Marine Sanctuary Program would be updated to ONMS, and updates would be made to make the charter consistent with the model charter in the national SAC Handbook.

Following the meeting, FKNMS staff members would work with ONMS staff members on the revisions, and when ready, it would be signed by the ONMS Director, Ms. Ferguson explained. She if it was possible to make just minor changes, that would be reported back to the SAC at the December meeting, and if the model template required more substantive changes to the charter, then the agenda item would be a little longer, to review those. She said she expected the new version of the SAC Charter to be signed before December 31, as that was the date the current version expired.

Mapping Flats Fish Habitats and Other Key Areas -- Brooke Denkert – Bonefish & Tarpon Trust (BTT)

Chair Nedimyer said understanding the habitats fished used would be important in the regulatory and marine zoning review effort and mapping, and he introduced Ms. Denkert.

A guide from Key West stated he had participated in the project and was also available to answer questions. A number of his comrades also participated, he said, and he added the project was well-received.

Mr. Bergh said The Nature Conservancy and Aaron Adams of BTT thought it would be good to have spatial information about who was using what natural resources where. In this case, it was flats fish, the flats, and areas important for those uses, and some of the issues associated with those areas. Ms. Denkert had been working on this for three months, and recently got her Master's degree.

Ms. Denkert said she had been working on this project since late July and hoped to have it done within next the eight months or so. BTT hoped the information could be used in the marine zoning and regulatory review process. She provided background about BTT, which she said was founded in 1997 to support research, education and conservation of bonefish and tarpon. It is a science organization that is member driven, with funding from member donations and participation, and sponsor collaboration.

She said the habitat-based assessment project was a collaboration of BTT, The Nature Conservancy, and Keyskeeper. They had common ground in wanting to create a sustainable activity for conservation of the environment, and they were doing habitat mapping because there was a management need. She said it had worked before, and she provided an example of how hunters and anglers did a similar project in Montana, which identified areas important for hunting and fishing. She explained the importance of catch and release fishing, which had been part of Keys culture and the community for a long time, and it was an economic asset for the region.

Maps of fishing zones were being created, using anonymous information from guides. BTT would release a consensus map, consult with the guides again, then layer the maps. She noted FKNMS identified three types of habitat it felt was important, and she said BTT also identified soft bottom and mixed habitat as important. She demonstrated a sample map, and how habitat layers were added to create a zone that could be managed in a conservation-minded, low-impact usage way. She stated BTT wanted to gather more information for mapping, as it resulted in a better process.

- Bruce Frerer asked about where they larvae go, how juveniles used various parts of the habitat, etc. and said the guides only used areas where adult bonefish were.

- Ms. Denkert replied fisheries science was multi-faceted, and right now they were focusing on how the habitat and resource was being used by our community and how the guides were fishing for the fish. When it came to everything else, she said that was being taken care of, it was hoped, with other projects they had going on, such as looking at food quality. She added she had also asked the guides for information where bonefish fishing used to be good.

- In response to some questions about guide participation in the study, Ms. Denkert said she had maps from twenty guides. They were working with as many guides as possible, from Key Largo to Key West, and might expand the study later.

- Mr. Weatherby asked about the values of the Bahamas fishery and asked about how it might apply in this area.

- She did not want to speculate, but felt our flats fishery might be more worth more than we thought it to be.

NOAA GCEL Program Update – Benjamin Friedman, Mr. La Bissonniere, and Mr. Landon, NOAA GCEL

Mr. Morton introduced the three speakers. He said they were lawyers; Mr. Friedman was the Deputy General Counsel in NOAA; Mr. Landon was the General Counsel for NOAA enforcement, and Mr. La Bissonniere was the General Counsel for ocean services. He reviewed the work the SAC did for the marine zoning and regulatory review would eventually go up the chain through a rulemaking process, and they would be involved in the review.

Mr. Friedman said he was deputy general counsel at NOAA, and introduced the other two speakers. He said GCEL had 115 attorneys plus about 30 support staff in six regions and at NOAA headquarters. He discussed the sections and their functions, and noted Mr. Landon was Karen Raine's boss.

Enforcement came out of section 307 of the National Marine Sanctuaries Act, such as unlawful fishing and diving. The natural resources section was the one FKNMS worked with on things like larger groundings and spills. Attorneys in Tampa worked on fisheries regulatory issues. The biggest issue GCEL was facing was one of resources, which he acknowledged was a government wide issue. Things were going to get worse instead of better, he felt. He urged the SAC to target its resource to limited areas.

Mr. Landon, General Counsel for enforcement, said a range of cases came in, from things like written warnings, cases for first time offenders, and major violations of the protections. They had a heavy caseload. He noted they would rather have voluntary compliance, but that was not the reality. Enforcement served as a deterrent effect for the future. He said things mentioned in the SAC workplan such as violations for groundings, destruction from anchoring in prohibited areas dovetailed well with what they did. Their basis for assessing penalties was the impacts to the sanctuary. There were large penalties for larger, more significant damages.

Mr. La Bissonniere said he was chief of the Oceans and Coasts section. His office dealt with day to day sanctuary issues, like permit and regulations issues. Normally he saw things at the tail end, and took them forward for legal review.

If someone asked him how long the marine zoning and regulatory review might take, the answer was usually, "It depends." It depended upon the complexity of what was being proposed. The ONMS would take the recommendations, and draft a proposed rule (a regulation that would make the item law). The proposed rule went to his section to look at the legal substance and procedure, looking for things such as consistency with the National Marine Sanctuaries Act, compliance with other environmental laws, the Administrative Procedures Act, etc. They would coordinate with Ms. Raine to determine if it would be enforceable. Once his office has signed off, then it would go to National Ocean Service (NOS). NOS would look at it from a policy perspective; once that hurdle was cleared, it went to their general counsel, then to NOAA leadership, then the Department of Commerce (DOC). This would occur for both a proposed and final rule. Once the final rule was published, there was a 30 day cooling off period, which allowed the public to conform. In summary, there was a lot of review and a lot of steps. This was what happened regardless of the complexity of the rule. A single change in sanctuary regulations would likely go through pretty fast, but a marine zoning change would be pretty complex and would likely take longer. The National Environmental Policy Act (NEPA) was also important, and was triggered for any impact likely to have a significant impact on the human environment. Anything dealing a management plan change would need an EIS. In addition, an Executive Order drafted by the President in 1993, which allowed the Office of Management and Budget to review regulations before they went out, looking to see not only did NOAA want to take the action, but did the Executive government want to take the action. OMB could hold onto it for 90 days. This overview reinforced why the process so long, and why it depended. It was not necessarily a bad process; one of the good things was there was not a lot of top down stuff; more was bottom up, with a lot of regional buy-in, which in the long term, he felt would be a lot more durable.

- Mr. Smith said enforcement came up as a concern during a public meeting, and asked Mr. La Bissonniere if he could suggest where in the system the most effective direction would be for the SAC to make recommendations.

- He said they would look at any recommendation for enforceability, so that was the first gate. How would an enforcement officer (NOAA Office of Law Enforcement [OLE] or state and local partners) in a

boat know there was a violation of x, and would they be able to gather the evidence and prosecute the case? He suggested people think about how that, and how the item would be enforced.

- Mr. Barras asked how it would be possible to change the regulation that did not allow dredging, and if it would require an act of Congress.

- The regulation would have to be changed [following the process previously reviewed] or could it could potentially be allowed under a permit. An act of Congress would probably not be necessary, as changing the regulation would probably be needed.

- Mr. Grathwohl asked Mr. La Bissonniere about how he would feel about adaptive management for dealing with something like wildlife no longer being in an area due to a hurricane, but the protected area was still there, by moving the protection to an area where it was needed due to the wildlife shifting there.

- He replied when there were emergency situations, they could move through the system more quickly. When dealing with changes over time, it really had to go through the more traditional processes overviewed.

- Mr. Morton said people had talked about an emergency rule vs. full rulemaking. Basically it would have to be front loaded, and it was something people were interested in tackling. There was an idea of what was wanted but there were issues of how to make it legal, and not giving all the authority to sanctuary superintendents.

- They worried about that too, Mr. La Bissonniere said.

After the speakers were thanked, there was a break to honor and celebrate the 40th anniversary of the passage of the original National Marine Sanctuaries Act.

Agency Report Highlights

NOAA Office of Law Enforcement (OLE) Report – Special Agent Kenny Blackburn, OLE

Special Agent Blackburn reviewed the sentencing of Mike Kimbler and Mike Bland by a federal judge. Mike Bland got a year of house arrest, and OLE seized his boat. OLE worked on the final order of forfeiture of their boats through the Department of Justice; the boats would become law enforcement boats for the USFWS. In another case, Manuel Ravelo, Jr. would be sentenced in November, and OLE would do an order of forfeiture for his boat, which would likely go to the USFWS for as well. He said over a square acre of casita material had been removed.

- Mr. Newman commented he had no idea what the cases were since he was new.

- Special Agency Blackburn elaborated that these cases all were commercial lobster fishing cases they had made within the last two years involving casitas. The work started in 2008. He mentioned another one would be coming up to a final date soon. He added there were only two agents in the Florida Keys, and their resources were scarce as well. He encouraged the SAC to reach out to them with information related to enforcement.

- Mr. Weatherby asked if the U.S. Coast Guard (USCG) and Navy were cross-deputized to enforce sanctuary rules

- The USCG was but the Navy was not. Special Agent Blackburn also reported John O'Malley was working with the USFWS and training divers.

- When someone asked about groundings, he said OLE would not get involved in groundings unless they were very substantial; most groundings were handled by FWC. They also normally did not get involved in boating accidents, so he explained a situation in which they did. He said he and Special Agent O'Malley were criminal investigators and tried to focus on big cases and big problems, since there was just the two of them.

- Mr. Grathwohl asked if they would be busier soon, with a new billfish law coming out, with foreign countries not being allowed to import billfish into the U.S.

- It had not slowed down since, Special Agent Blackburn said, and he agreed they dealt with fisheries importation for food issues, and so would work with the state of Florida on billfish. He added they were

trying to be proactive in educating restaurants and had worked with some in Key West so far. They would like to go from Key Largo to Key West, talking about proper fish buying, as a restaurant needed to buy from a federally licensed wholesale dealer. He and Special Agent O'Malley would like to try to deal with backdoor sales, which came to their attention from complaints from dealers.

Sanctuary Superintendent's Report

Mr. Morton said the SAC had a good sense of what he had been working on and what FKNMS would be working on over the next few months. Besides working on the workplan, there would be a lot of interagency coordination, including travel to other parts of Florida. A top priority for Dan Basta was the SAC Summit meeting, which was taking place in December. Mr. Basta wanted to hear about what they wanted to coordinate on nationally. He encouraged people to be in touch with Chair Nedimyer, as he would be seeing the other Chairs for two or three days.

Agency Report Highlights Cont.

NOAA GCEL Report – Ms. Raine, GCEL

Ms. Raine gave an update from her office of civil administrative violations for FY 12. She said there had been a total of eight written warnings for grounding cases, seagrass or coral reef framework groundings. There were 23 charging documents where money was assessed to people who they thought violated the law; 14 involved groundings. Three were coral groundings, and the penalties ranged from \$3,000 to \$9,000. Eleven were seagrass groundings, and those penalties ranged from \$2,700 to \$12,000. There were five cases on unlawful fishing in FKNMS, four recreational (\$250 - \$1,000 penalties) and one commercial (\$5,400 penalty). There were two anchoring cases in Tortugas North (\$3,000 and \$4,500 penalties) and two ATBA violations (both went out at \$6,000). The money went into a sanctuary fund.

- Mr. Morton added it went into a fund just for FKNMS, for things like equipment for the damage assessment team, lobster brochures, and regulations, to try to reduce the number of violations. Use of the money got approved at a pretty high level to make sure it was related to trying to reduce future enforcement actions or for the teams dealing with those enforcement actions.

U.S. Navy (USN) Report -- Ed Barham, USN

Mr. Barham reported they had six confirmed sea turtle nests on the Truman Annex beach and thought there were more that were three or more unconfirmed. There was one disorientation, but got funding for the next year to retrofit the lighting in Truman Annex to turtle friendly lighting. The USN also received several hundred thousand dollars in end of year funding for benthic surveys of all of their [local property] shoreline. Finally, he reported they had crocodile sightings on the installation in the last two months, including a juvenile crocodile at Boca Chica.

- Mr. Bergh asked about the Saddle Bunch array and what would become of the property.
- The buildings were being pulled out, and it would go into caretaker status. There would be a lot of good mitigation [opportunities] there, likely within a few hundred yards of their shorelines.
- It would be good if they could get information on scarring. Mr. Bergh commented, for the seagrass working group.

USCG Report -- Phil Goodman, U.S. Coast Guard Auxiliary

The USCG responded to 31 calls in FKNMS since the last meeting from the National Response Center for pollution call-outs. Two of the cases were federalized, related to fuel reports jettisoned from migrant boats, but was not found. Offshore drilling off Cuba continued at the Venezuela tract; there was no change, but it was expected to continue. Last month, the first series of HAZWOPR response trainings concluded, with 280 people trained, he said. In January, there would be another round of the trainings up and down the Keys.

- Was there any information on new leaking at the Deepwater Horizon site, Mr. Weatherby inquired.
- No, but he would be interested to find that out, Mr. Goodman answered.

National Park Service (NPS) Report – Tracy Ziegler, NPS

Dr. Ziegler said researchers had looked at the effects of sunscreens in corals, and found that it caused symbiotic algae to leave the corals, so the corals bleached. The NPS was trying to promote having the public not wear sunscreen in the water, but to wear rashguards and hats.

- Mr. Mitchell asked about sunscreen like “reef safe.”
- She said no sunscreen had been proven to be reef safe though there were some with more natural chemicals that might not be impacting the reefs as harshly. They had not been testing on the wide array of chemicals out there, just the ones most commonly in the stores.
- They carried “reef safe” sunscreen in his store, Mr. Mitchell said. He wondered if it was not reef safe.
- Chair Nedimyer mentioned there were chemical and barrier type sunscreens. Most were chemical types, and all were pretty much toxic to corals. The barrier type was zinc based.

DEP Report – Ms. Walczak, DEP

Ms. Walczak said she had been at the U.S. Coral Reef Task Force meeting and so missed the last SAC meeting. The meeting she went to in American Samoa focused on disaster response and resilience. They discussed oil spills, hurricanes, climate change resilience, etc., and creating a reef managers guide to reef mitigation and restoration. There was a desire to have standard conditions across all jurisdictions. She then mentioned she was officially confirmed for this seat on the SAC. Recently, she was promoted to a regional administrator position, overseeing the coral program and the FKNMS program. She was working with Mr. Morton and Mr. Tagliareni to hire another DEP staff member to be physically present at FKNMS to represent DEP. As part of the promotion process, she brought Kevin Claridge to visit the FKNMS offices at the end of September. He had delegated his authority to make decisions regarding sanctuary issues to her.

FWC, Fish and Wildlife Research Institute Report – Mr. Hunt, FWC

FWRI had an annual workplan meeting with the division of marine fisheries management, which would be presented to the FWC Commissioners at the Commissioners’ November meeting, Mr. Hunt reported. When he got a final copy, he would get it to the SAC. **ACTION ITEM:** Mr. Hunt to get a copy of the final annual FWC workplan, when available, to the SAC. The marine zoning and regulatory review process was one of the highest priorities for the division this year, and FWC intended to have people in all the working groups, but the details needed to be worked out, he said.

FWC, Division of Law Enforcement Report – Major Alfredo Escanio, FWC

There were a total of 29 groundings for August and September. Ms. Raine already mentioned a number of the citations. FWC was in the process of getting a new captain for the Gladding, it was hoped by the end of the month, he said. In addition, FWC was working with its federal partners, and county partners, the Border Patrol and the USCG to work on trap robbing in the Keys.

U.S. Environmental Protection Agency (USEPA) – Pat Bradley, USEPA

USEPA just completed a reef link database, which was on the web. It was systems approach to looking at coral reefs, starting with the economic sectors that supported basic human needs, the stressors that came from that of that, how that affected things that we got out of the environment/ the ecosystem services, and management approaches. It was on the USEPA website. USEPA also just came out with a companion website, a tutorial on systems thinking. She said she would send Ms. Ferguson the URLs. **ACTION ITEM:** Ms. Bradley to send Ms. Ferguson the USEPA project website addresses. During the last SAC meeting, she was in Puerto Rico, where a panel of scientists began looking at how linear shallow reefs in Puerto Rico changed in their condition as human stressors increased, including multiple assemblages and the connectivity issue. They were working a conceptual framework, which would take a couple of years

to develop for Puerto Rico and the U.S. Virgin Islands. She USEPA Region 2 and the Office of Research and Development were sponsoring scientific managers to come work with researchers and in February a woman from Puerto Rico would come work with Mrs. Bradley on research. She said she would like to introduce her to FKNMS activities and to have her interact with the FKNMS staff and learn about FKNMS activities, such as education and outreach and mooring buoy work. She said she would bring her to the SAC meeting in February.

USFWS Report – Kristie Killam, USFWS

Karen Hillier was stepping up to do many of the refuge manager duties, Ms. Killam said. Michael Lusk was in the Keys for thirty days, helping on a detail, she added. The USFWS hoped to have someone in the refuge manager position by January or February, she said, and they also hoped to have biologists and managers in the working groups.

A few people then made unrelated comments.

Mr. Grathwohl mentioned a movie Chair Nedimyer was in with his volunteers.

Mr. Moe said the plague for the *diadema* was back. He said he would send Ms. Ferguson a report on it to send to the SAC. **ACTION ITEM:** Mr. Moe to send a *diadema* report to Ms. Ferguson to send to the SAC.

Mr. Popham said Mr. Hunt did not mention work on the bonefish and tarpon hatchery at Keys Marine Laboratory.

- He missed the meeting, Mr. Hunt replied.

Mr. Popham said the Wildlife Foundation of Florida, FWC and BTT were working on putting a bonefish and tarpon hatchery at the Layton laboratory, a portion of which was not being utilized, to propagate those fish. He hoped Mote and BTT could help with working on the funding. Mr. Popham also said Commissioner Neugent was working hard on the Restore Act funds, and Monroe County would get between \$15-20 million BP dollars along with some other funds, which had to be put back into restoration and different things.

Mr. Popham then proposed and moved, seconded by Don Kincaid:

That the Florida Keys National Marine Sanctuary Advisory Council supports the Act that created the FKNMS and the sanctuary-wide regulations that prohibit “dredging, drilling, prop dredging, or otherwise altering the seabeds, or placing or abandoning any structure on the seabed.”

Chair Nedimyer asked if there was discussion.

- Mr. Barras stated he attended several presentations in the lower Keys regarding the dredging projects. He said there were serious financial ramifications to not just Key West but the entire Florida Keys, both in tax revenues and in future tourists. He proposed getting the facts from both sides, before the SAC made any kind of resolution, and not just have one group make a suggestion. He had been skeptical but now felt the SAC should be on the other side of this issue.

- A number of people expressed opinions about not hearing this issue, stating it was premature to act, the timing was off, and that it was a breach of protocol.

- Mr. Daughtry said if the SAC had to make a recommendation to Mr. Morton, who already said he would only say it was a prohibited activity and could not comment, and would not make any changes, what was the SAC talking about [this for]?

- Mr. Morton said he had already provided comment to the city.

- The motion was that the SAC supported the regulations currently in place in the sanctuary, Mr. Popham said. He said he had quoted from the Sanctuaries Act.
- Various people felt that was understood.
- Chair Nedimyer said Mr. Popham was responding to a request from the City of Key West for a position. He said he agreed with some of the concerns, but he had been at meetings before when a topic popped up and there was a knee-jerk reaction. The right process was a noticed meeting, where the SAC intended to take action, and to bring stakeholders from each side. He was not comfortable with breaking protocol and the SAC charter to do something, though done in the past.
- Mr. Barras added it would be great to see the results of the study. He added the Westin and the federal government would pay for part of the study, and apparently the Army Corps of Engineers would have to do a study as well.
- Mr. Smith suggested looking at this at the next SAC meeting, putting it on the agenda and looking at all the issues concerned.
- Chair Nedimyer said the pressing issue was the City of Key West was going to address the issue the next day. The city came to him, through Mr. Barras and Mr. Morton, and Chair Nedimyer responded the SAC would not take it on at the last minute, since there would have been just a city presentation and no other perspectives brought in for balance. If there had been time to talk about it and include it on the agenda, it might have been appropriate.
- There was then some discussion about the \$5 million for the study, and Mr. Barras mentioned he felt that amount was insignificant compared to what the industry was doing now. He felt the dredging issue affected the future of the tourism market here, our main industry.
- Mr. Scholl explained the feasibility study had new rules, that only \$3 million could be spent; it had to be done within three years; and there would be three levels of review.
- Mr. Makepeace suggested that, assuming the study went forward, Mr. Morton could keep the SAC posted about where the process was.
- Mr. Popham said the resolution was not taking a position; it supported the regulations in place.
- There were other comments regarding support or non-support for having the SAC vote on the resolution.
- Mr. Morton said process-wise, he had not looked at the last feasibility study. FKNMS would probably be consulted as a part of this, but this would not involve any change in regulations, as this involved a study. Process-wise, it was gathering more information and would not involve any application for rulemaking. He explained the FKNMS regulations prohibited damage to the seafloor, coral could not be damaged corals. Some of the corals were listed as endangered or could be soon. He noted there were issues under the Marine Mammal Protection Act and the Magnuson Stevens Act. The city would consult with NOAA, the USFWS and other agencies on its analyses, and one intent of the study would be to lay out challenges faced by such a project. He said FKNMS would not weigh in on it until all the information for an application was put in front of FKNMS.
- Chair Nedimyer read relevant language in the FKNMS Advisory Council Charter regarding notice, agendas, and voting. "Timely notice of each council meeting, including the time, place and agenda for each meeting, shall be provided to the local media...the council may not vote at any meeting for which the above public notice has not been issued. The council may not vote on any agenda item for which notice was not provided." He said he did not want to violate the charter, and asked the SAC if it wanted to violate the charter. He felt it should be tabled, and he tabled the matter and the motion.
- Mr. Grathwohl asked to have this discussion to the December meeting in Key West, when it would be on the agenda.
- Chair Nedimyer asked if there was time on the agenda?
- How about later? Mr. Grathwohl asked.
- Mr. Morton stated it was a Key West issue, and would be a long one, if it were on the SAC agenda. He asked how many groups the SAC wanted to hear on it, and how much public comment the SAC wanted to take. He also asked what the SAC wanted to take away from it; his position would remain the same.
- After some further discussion, including about what was already planned for the December SAC agenda, Chair Nedimyer said he did not want to deal with it in December, and that when the time was

right for the SAC to hear it, he wanted plenty of notice and to have information on all sides of the issue provided to the SAC.

Public Comment

There was none.

Upcoming Meeting and Closing Remarks – Chair Nedimyer, SAC

Chair Nedimyer asked if the people beginning initial terms on the SAC could say a bit about themselves.

- Mr. Bruland said he was a third generation fishermen in the Keys, that he graduated from Florida State two years before, and lived in Marathon. He fished crawfish and stone crab, was working to get himself established and was working with his dad's business.
- Mr. Handte said he had lived in the Keys all his life; he said he was a hotel manager in the upper Keys.
- Mr. Scholl said he was double retired, having first retired from the USN, then as manager of the City of Key West. He mentioned he and his wife planned to stay in the Keys.
- Mr. Newman said he did public relations for the Monroe County Tourist Development Council, and had done that for over thirty years. He split his time between lower Matecumbe Key and Palmetto Bay in Miami. He stated he was a huge believer in FKNMS from a protection standpoint and a reasonable and responsible usage standpoint. He said he used the sanctuary as a marketing point to bring people to the Florida Keys.
- Ms. Silvia said she was the Executive Director of the Historical Florida Keys Foundation.

Chair Nedimyer encouraged people to go by and see the artist [Robert] Wyland repainting his murals in the Keys. The next SAC meeting would be at the Key West Doubletree Hotel, and the agenda was full. He doubted if they could have Christmas goodies at the meeting, so maybe someone could look into that or ask if the Doubletree would provide the food. **ACTION ITEM:** Someone [to be determined] to check into having the Doubletree provide food at the Key West SAC meeting.

Meeting adjourned, 4:17 PM.